

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LARRY JAMES BURNSIDE,

Plaintiff,

v.

MICHAEL J. ASTRUE, Commissioner of
Social Security,

Defendant.

Case No. C12-1739-RSM-JPD

REPORT AND RECOMMENDATION

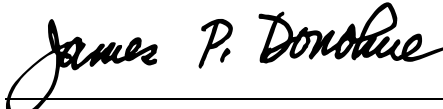
This matter comes before the Court upon the defendant's motion to remand this case for further administrative proceedings pursuant to sentence six of the Social Security Act, 42 U.S.C. § 405(g). Dkt. 11. Specifically, sentence six of 42 U.S.C. § 405(g) provides that "the court may, on motion of the Commissioner made for good cause shown before he files his answer, remand the case to the Commissioner for further action by the Commissioner of Social Security. . . ."

The Commissioner initially requested "a reasonable amount of time" for the Appeals Council to search for the missing recording of plaintiff's July 9, 2007 hearing before an administrative law judge. Dkt. 11. In his response, plaintiff agrees that a sentence six remand is warranted, but contends that the Commissioner's request for a "reasonable" amount of time to locate the recording is "open-ended and gives the Commissioner an indefinite amount of time to

1 search for an Administrative Record which the Commissioner has not certified is lost.” Dkt. 12
2 at 1. In his reply, the Commissioner asserts that plaintiff’s “concern is now moot because the
3 Appeals Council has concluded its unsuccessful search for an uncorrupted copy of the audio
4 recording . . . this case should be remanded to the Commissioner pursuant to sentence six of 42
5 U.S.C. § 405(g) for a de novo hearing, without specifying any amount of time to search for the
6 audio recording.” Dkt. 14 at 1-2. *See also* Dkt. 15 (Griffith Decl.).

7 Based on the defendant’s motion, the parties’ briefs, and the balance of the record, the
8 Court recommends that defendant’s motion, Dkt. 11, be GRANTED, and this case be
9 REVERSED and REMANDED pursuant to sentence six of 42 U.S.C. § 405(g) for further
10 administrative proceedings. On remand, the Commissioner shall conduct a *de novo* hearing. A
11 proposed order accompanies this Report and Recommendation.

12 DATED this 22nd day of January, 2013.

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15 JAMES P. DONOHUE
16 United States Magistrate Judge
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